

BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON DC 20268-0001

NOTICE OF MARKET-DOMINANT
PRICE ADJUSTMENT

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Docket No. R2013-1

COMMENTS OF
ALLIANCE OF NONPROFIT MAILERS
ON USPS COMPLIANCE FILING
(December 4, 2012)

Pursuant to Order No. 1556, the Alliance of Nonprofit Mailers (“ANM”) respectfully submits the “United States Postal Service Response to Order No. 1541,” filed by the Postal Service on November 26, 2012 (“USPS Compliance Filing”). These comments concern the worksharing discounts proposed by the Postal Service for nonprofit Standard Mail, and the justifications asserted in the Compliance Filing for the Postal Service’s failure to offer the same worksharing discounts to the nonprofit and commercial subclasses.

In Order No. 1541, the Commission requested that the Postal Service either (1) “provide a justification as to why it views the different levels of discounts to Standard Mail” as “consistent with the PAEA and not contrary to *National Easter Seal Society* [*v. USPS*, 656 F.2d 754 (D.C. Cir. 1981)]” or (2) “revise these discounts.” Order No. 1541 at 51.

The Postal Service has not proposed in its November 26 compliance filing to equalize the discounts. In a number of rate categories, the proposed discounts are still shallower for the nonprofit subclasses than for their commercial counterparts:

Workshare Rate Category	Benchmark Rate Category	Discount		Percent Difference
		Commercial	Nonprofit	
Auto 5D Flats	Auto 3D Flats	\$0.093	\$0.090	-3.2%
Nonauto 3D Flats	Nonauto ADC Flats	\$0.050	\$0.044	-12.0%
High Density Letters	Carrier Route Letters	\$0.077	\$0.074	-3.9%
High Density Plus Letters	Carrier Route Letters	\$0.080	\$0.077	-3.8%
High Density Flats	Carrier Route Flats	\$0.051	\$0.049	-3.9%
High Density Plus Flats	Carrier Route Flats	\$0.055	\$0.053	-3.6%

The Postal Service offers the following arguments in defense of these continued disparities:

- (1) *National Easter Seal Society* indicates that unequal worksharing discounts are not “discriminatory” if the Postal Service has a “reasonable ground” for the price disparities. Compliance Filing at 6.
- (2) Designing nonprofit rates that satisfy 39 U.S.C. § 3626(a)(6), which requires that the average revenue per piece from Nonprofit “products” equal, as nearly as practicable, 60 percent of the average revenue per piece from the corresponding Commercial “products,” is a “complex task.” *Id.* at 6-7. “Often, this complexity precludes the Postal Service from making Nonprofit presort discounts identical to Commercial presort discounts without setting the Nonprofit base rate higher than would be most efficient or otherwise preferable from a policy perspective.” *Id.* at 7. “In reality, the PAEA’s overriding mandate of Nonprofit rates resulting in 60 percent of the revenue per piece of Commercial rates necessarily results in some variance both from the Commercial presort rate structure

and among the per piece revenues at each level of the Nonprofit rate structures.” *Id.*

- (3) “Indeed, identical presort discounts could lead to users of” undiscounted Nonprofit rates “paying considerably more than 60 percent of the corresponding Commercial” rates, while users of discounted nonprofit rates “would pay considerably less than 60 percent” of discounted commercial rates. *Id.* “One might argue” that this outcome “would be discriminating between regular Nonprofit mailers and presort Nonprofit mailers.” *Id.*
- (4) The Postal Service has failed to equalize several worksharing discounts between nonprofit and commercial Standard Mail in previous general price adjustment cases since the enactment of PAEA. *Id.* at 7-8.

None of these arguments appeared in the Postal Service’s previous filings in this case, and these belated rationalizations do not withstand scrutiny. We respond to them in turn.

(1) Disparities between the worksharing discounts offered to nonprofit and commercial mailers by definition constitute discrimination under 39 U.S.C. § 403(c). To be sure, the discrimination is not *undue*—or unlawful under Section 403(c)—if the Postal Service provides “some reasonable ground for [the] differential treatment.” The reasonableness of the asserted justification must be established, however, not merely assumed or asserted. *National Easter Seal Society*, 656 F.2d at 761-762. This requirement applies with particular force when the Postal Service proposes a facially

discriminatory rate design in a general price adjustment case filed under 39 U.S.C. § 3622(d): the “trade-off for the Postal Service’s increased price adjustment flexibility is increased transparency.” Docket No. R2009-2, *Notice of Price Adjustment* (March 16, 2009) at 69-72 (disallowing “mailing agent” rates for Gold and Platinum tiers of Confirm service as contrary to 39 U.S.C. § 403(c)).

(2) The notion that equalizing nonprofit and commercial worksharing differentials while complying with 39 U.S.C. § 3626(a)(6) is too “complex” to achieve reflects a basic misunderstanding of the statute. Section 3626(a)(6) does not require that the Postal Service apply the 60 percent ratio to each individual rate cell or even “product”: the statutory ratio governs the relationship between average revenue per piece for nonprofit vs. commercial Standard Mail only at the *subclass* level of aggregation. *Id.* (emphasis added). The Postal Service certainly did not apply the 60 percent ratio to individual rate cells or rate categories when designing the rates proposed in this case. Indeed, for any individual rate category, *none* of the ratios between the nonprofit rates proposed by the Postal Service and their commercial counterparts equal 60 percent. Tables 1 and 2, drawn from Attachment A to the Postal Service’s October 11 Notice of Price Adjustments and Attachment A to the Postal Service’s November 26 compliance filing, underscore this fact:

TABLE 1
STANDARD MAIL LETTERS
NONPROFIT VS. COMMERCIAL RATES

	Nonprofit Standard Mail	Commercial Standard Mail	Ratio
<u>Nonmachinable Letters, minimum piece rate</u>			
Piece Rate			
Mixed ADC	\$0.520	\$0.632	82.3%
ADC	\$0.425	\$0.537	79.1%
3-digit	\$0.391	\$0.503	77.7%
5-digit	\$0.296	\$0.408	72.5%
Destination Entry Discounts			
NDC	\$0.033	\$0.033	100.0%
SCF	\$0.043	\$0.043	100.0%
<u>Nonmachinable letters, piece and pound rate</u>			
Piece Rate			
Mixed ADC	\$0.299	\$0.429	69.7%
ADC	\$0.257	\$0.387	66.4%
3-digit	\$0.212	\$0.335	63.3%
5-digit	\$0.134	\$0.257	52.1%
Pound Rate	\$0.648	\$0.752	86.2%
Destination Entry Discounts (off pound rate)			
NDC	\$0.161	\$0.161	100.0%
SCF	\$0.209	\$0.209	100.0%
<u>Machinable Letters</u>			
Piece Rate			
Mixed AADC	\$0.178	\$0.290	61.4%
AADC	\$0.162	\$0.274	59.1%

Destination Entry Discounts

NDC	\$0.033	\$0.033	100.0%
SCF	\$0.043	\$0.043	100.0%

Automation Letters

Piece Rate

Mixed AADC	\$0.170	\$0.282	60.3%
AADC	\$0.154	\$0.266	57.9%
3-digit	\$0.154	\$0.266	57.9%
5-digit	\$0.135	\$0.247	54.7%

Destination Entry Discounts

NDC	\$0.033	\$0.033	100.0%
SCF	\$0.043	\$0.043	100.0%

Full-Service IMB Discount

	\$0.001	\$0.001	100.0%
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TABLE 2
STANDARD MAIL FLATS
NONPROFIT VS. COMMERCIAL RATES

	Nonprofit Standard Mail	Commercial Standard Mail	Ratio
<u>Nonautomation Flats, minimum piece rate</u>			
Piece Rate			
Mixed ADC	\$0.417	\$0.566	73.7%
ADC	\$0.380	\$0.529	71.8%
3-digit	\$0.336	\$0.479	70.1%
5-digit	\$0.258	\$0.401	64.3%
Destination Entry Discounts			
NDC	\$0.033	\$0.033	100.0%
SCF	\$0.430	\$0.430	100.0%
<u>Nonautomation Flats, piece and pound rate</u>			
Piece Rate			
Mixed ADC	\$0.283	\$0.411	68.9%
ADC	\$0.246	\$0.374	65.8%
3-digit	\$0.202	\$0.324	62.3%
5-digit	\$0.124	\$0.246	50.4%
Pound Rate	\$0.648	\$0.751	86.3%
Destination Entry Discounts (off pound rate)			
NDC	\$0.161	\$0.161	100.0%
SCF	\$0.209	\$0.209	100.0%
<u>Automation Flats, minimum piece rate</u>			
Piece Rate			
Mixed ADC	\$0.362	\$0.511	70.8%
ADC	\$0.352	\$0.501	70.3%
3-digit	\$0.306	\$0.455	67.3%

5-digit	\$0.216	\$0.362	59.7%
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Destination Entry Discounts

NDC	\$0.033	\$0.033	100.0%
SCF	\$0.043	\$0.043	100.0%

Automation Flats, piece and pound rate

Piece Rate

Mixed ADC	\$0.228	\$0.356	64.0%
ADC	\$0.218	\$0.346	63.0%
3-digit	\$0.172	\$0.300	57.3%
5-digit	\$0.082	\$0.207	39.6%

Pound Rate	\$0.648	\$0.751	86.3%
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Destination Entry Discounts (off pound rate)

NDC	\$0.161	\$0.161	100.0%
SCF	\$0.209	\$0.209	100.0%

Full-Service IMB Discount

\$0.001	\$0.001	100.0%
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Moreover, the additional revenue leakage that would result from making the nonprofit Standard Mail worksharing discounts as deep as the corresponding commercial discounts would not require large offsetting increases in undiscounted nonprofit rates. Table 3 (on the following page) shows that fully equalizing nonprofit Standard Mail worksharing discounts with their commercial counterparts would result in less than \$3.1 million in additional revenue leakage per year—equal to approximately 1/50 of one cent per piece of nonprofit Standard Mail, or 17/100 of one percent of total nonprofit Standard Mail revenue. Offsetting this modest amount of additional leakage could be accomplished by making any number of minor adjustments to other elements of the nonprofit Standard Mail rate schedules. Compliance with 39 U.S.C. § 403(c) does not require Herculean feats of rate design.

Table 3. Additional Revenue Leakage From Increasing Standard Mail Nonprofit Discounts to Commercial Levels						
Discount	Affected Rate Categories	Discount			Affected Volume	Additional Revenue Leakage
		Commercial	Nonprofit	Difference		
		[1]	[2]	[3]=[1]-[2]		
Auto 5D Flats	Auto 5D Flats	\$0.093	\$0.090	\$0.003	714,299,420	\$ 2,142,898
Nonauto 3D Flats	Nonauto 3D and 5D Flats	\$0.050	\$0.044	\$0.006	57,967,000	\$ 347,802
High Density Letters	High Density Letters	\$0.077	\$0.074	\$0.003	96,961,225	\$ 290,884
High Density Plus Letters	High Density Plus Letters	\$0.080	\$0.077	\$0.003	47,935,898	\$ 143,808
High Density Flats	High Density Flats	\$0.051	\$0.049	\$0.002	67,940,129	\$ 135,880
High Density Plus Flats	High Density Plus Flats	\$0.055	\$0.053	\$0.002	14,964,240	\$ 29,928
Total						\$ 3,091,200
Per Standard Mail Nonprofit Piece [a]						\$ 0.0002
Percentage of Standard Mail Nonprofit Revenue [b]						0.17%

[1],[2] Calculated from USPS Response to PRC Order 1541 (Nov. 26, 2012), CAPCALC-STD-R2013 Order 1541.xls, "New Prices" tabs

[4] CAPCALC-STD-R2013 Order 1541.xls, "L-F-P NP Cap Weights" and "HD-Sat-CR NP Cap Wts."

[5][a] = [5] / 13,153,043,725 (CAPCALC-STD-R2013 Order 1541.xls, "L-F-P NP Cap Weights", cell E68 + "HD-Sat-CR NP Cap Wts.", cell E39)

[5][b] = [5][a] / \$.13826 (CAPCALC-STD-R2013 Order 1541.xls, "Price Change Summary," cell C22)

(3) The Postal Service's further argument for discriminatory worksharing discounts—that “identical presort discounts could lead to users of” undiscounted Nonprofit rates “paying considerably more than 60 percent of the corresponding Commercial” rates, while users of discounted nonprofit rates “would pay considerably less than 60 percent” of discounted commercial rates—founders on similar grounds. The statement is true—indeed, almost tautologically so—but irrelevant.

Worksharing discounts that are equal in absolute terms *by definition* have a greater effect in percentage terms when applied to nonprofit Standard Mail rates than to commercial Standard Mail rates, since the discounts are larger in proportion to the undiscounted rates. That is precisely what the drafters of 39 U.S.C. § 3626(a)(6) intended when they chose to define the nonprofit-vs.-commercial discount for Standard Mail in terms of average revenue for each subclass, rather than, as with nonprofit-vs.-commercial Periodicals Mail, at the level of individual rate elements. If the drafters had wanted to enforce the overall rate preference at the level of individual rate elements, they would have adopted language akin to the formula codified in 39 U.S.C. § 3626(a)(4) for Periodicals Mail.¹

¹ The Postal Service likewise gains nothing by noting that worksharing discounts for Nonprofit *Periodicals* Mail are generally set at approximately 95 percent of worksharing discounts for commercial Periodicals Mail. Compliance Filing at 7 n. 16. This result is mandated by 39 U.S.C. § 3626(a)(4)(A), which requires the Postal Service to apply the five percent statutory discount at the level of individual rate elements. Because the statutory formula for nonprofit Standard Mail rates, prescribed by 39 U.S.C. § 3626(a)(6), is not comparably restrictive, worksharing rate relationships for nonprofit Standard Mail are subject to 39 U.S.C. § 403(c). *Cf. National Easter Seal Society*, 656 F.2d at 760 (“Because the phase-in of worksharing discounts is not specifically authorized by section 3626, the question arises whether the phasing violates the Act’s antidiscrimination provision, 39 U.S.C. § 403(c).”).

Indeed, the same relationship holds for the rates that the Postal Service itself has proposed. As shown in Tables 1 and 2, *supra*, those proposed rates produce higher nonprofit-to-commercial rate ratios within the coarser presort tiers of each automation category, and lower nonprofit-to-commercial rate ratios within the finer presort tiers of the same automation category. *This relationship holds without exception for every automation category of the Postal Service's proposed Standard Mail rates.* This relationship is unsurprising: any worksharing discount passthrough for nonprofit Standard Mail that exceeds 60 percent of avoided costs will have this effect.

The Postal Service's suggestion that this phenomenon may be evidence of undue discrimination against undiscounted nonprofit rates and in favor of discounted rates (Compliance Filing at 7) is equally without merit. Price differences between rate categories of the same product that are justified by cost differences do not amount to undue discrimination. MC2002-2 Op. & Rec. Decis., *Experimental Rate and Service Changes to Implement Negotiated Service Agreement with Capital One* (May 15, 2003) at 29 ¶ 3030. Indeed, the proposition that worksharing discounts should equal cost avoidances is the essence of the Efficient Component Pricing Rule; and the lawfulness of 100 percent worksharing passthroughs was codified by the PAEA in 39 U.S.C. § 3622(e). The Postal Service's current argument to the contrary, if taken seriously, would preclude the Postal Service and the Commission from ever setting worksharing discounts for nonprofit Standard Mail at levels that comply with the Efficient Component Pricing Rule—or at any passthrough percentage in excess of 60 percent of avoided costs.

(4) The notion that the worksharing discounts implemented in past post-PAEA general rate cases provide precedential support for upholding Standard Mail worksharing discounts that discriminate against nonprofit mailers (Compliance Filing at 7-8) is equally wide of the mark. The discrimination issue was not raised in previous post-PAEA cases. Here, in contrast, it has been squarely raised.

For the foregoing reasons, the Commission should order the Postal Service to publish nonprofit Standard Mail rates in this docket that include (1) the same worksharing discounts implemented for commercial Standard Mail, and (2) reasonable offsetting rate adjustments to maintain the 60 percent ratio required by 39 U.S.C. § 3626(a)(6).

Respectfully submitted,

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